



INTERIOR BOARD OF INDIAN APPEALS

Edna M. Miller v. Bureau of Indian Affairs and Assistant Secretary -
Indian Affairs

32 IBIA 294 (08/25/1998)

Reconsideration denied:
33 IBIA 60



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

EDNA M. MILLER,
Appellant

v.

BUREAU OF INDIAN AFFAIRS and
ASSISTANT SECRETARY - INDIAN
AFFAIRS,
Appellees

: Order Docketing and Dismissing
: Appeals
:
:
: Docket Nos. IBIA 98-100-A
: IBIA 98-120-A
:
:
: August 25, 1998

On May 21, 1998, the Board of Indian Appeals received a letter from Edna M. Miller, stating in part: "I hereby request an administrative hearing concerning my family's Indian rights having been taken by omission of my tribe, the CHINOOK, from the Federal Register 'List of Recognized Tribes.'"

Ms. Miller's letter also made a request under the Freedom of Information Act (FOIA). That part of her letter was referred to the Director, Office of Hearings and Appeals, for response. Insofar as she requested an "administrative hearing," the Board construed her letter as a notice of appeal to the Board.

On May 29, 1998, the Board issued an order, stating in part:

It appears that Ms. Miller's concern is with the recognition of the Chinook Indian Tribe by the Federal Government. The Chinook Indian Tribe presently has a petition for Federal acknowledgment pending before the Bureau of Indian Affairs. A proposed finding against Federal acknowledgment was published on August 22, 1997, 62 Fed. Reg. 44714. The comment period on the proposed finding, originally scheduled to close on December 22, 1997, has been extended until June 15, 1998. See Bureau of Indian Affairs, Summary Status of Acknowledgment Cases. [Online] Available <http://www.doi.gov/BIA/0303stat.html>, May 29, 1998. [1/] Accordingly, no final determination has yet been issued. Upon issuance of a final determination, requests for reconsideration may be made to the Board of Indian Appeals in accordance with 25 C.F.R. § 83.11, a copy of which will be furnished to Ms. Miller in response to her FOIA request.

^{1/} The current version of this statement is located at <http://www.doi.gov/BIA/0617stat.html>, Aug. 25, 1998, and states that the comment period was further extended until July 30, 1998.

Thus, if Ms. Miller is attempting to appeal from BIA's acknowledgment determination, this appeal is premature.

The Board's May 29, 1998, order gave Ms. Miller an opportunity to show that the Board presently has jurisdiction over her appeal. Her response was due on August 3, 1998.

The Board has not received a specific response to its May 29, 1998, order. However, on July 27, 1998, it received a second notice of appeal from Ms. Miller, concerning the same subject matter. With her second notice of appeal, she encloses a copy of her June 24, 1998, letter to the Assistant Secretary - Indian Affairs, in which she requested that he "return the Chinook Indian Tribe to the list of recognized tribes in the Federal Register." Her notice of appeal to the Board is apparently intended to be an appeal under 25 C.F.R. § 2.8, "Appeal from inaction of official."

The Board lacks authority to review decisions issued by the Assistant Secretary - Indian Affairs, except where cases are specially referred to the Board by the Secretary or the Assistant Secretary, or where a right of review is established by regulation. E.g., Kawerak, Inc. v. Assistant Secretary - Indian Affairs, 28 IBIA 66 (1995), and cases cited therein. Accordingly, the Board also lacks authority to review a matter which has been presented to the Assistant Secretary for action and for which the appellant seeks Board review under 25 C.F.R. § 2.8. 2/

Appellant has failed to show that the Board has jurisdiction over either of her appeals.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, these appeals are docketed but are dismissed for lack of jurisdiction.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge

2/ Even if this jurisdictional problem did not exist, the Board would have concluded that, because the Chinook Tribe's petition for Federal acknowledgment is still pending before BIA, the Board presently lacks jurisdiction over the subject matter of Ms. Miller's appeals.